IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.484 OF 2006

Kaycee Industries Limited .. Petitioner.

V/s.

Union of India & Others .. Respondents.

Mr.H.R. Shetty i/b. M/s.H.R. Shetty & Co. for the petitioner.

Mr.R.V. Desai, senior counsel with Mr.Y.S. Bhate for the respondents.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 10TH MARCH, 2006.

P.C. :

Heard Mr.H.R. Shetty, the learned counsel for the petitioner and Mr.R.V. Desai, the learned senior counsel for the respondents.

2. Aggrieved by the order-in-original dated 11th February, 2004 passed by the Deputy Commissioner, Central Excise, Bhandup Division, Mumbai - III, the petitioner preferred appeal before the Commissioner of Central Excise (Appeals). The appeal suffered from delay exceeding 60 days and, accordingly, the Commissioner (Appeals) held that the delay is beyond the power conferred by the Act to the Commissioner. The appeal was, accordingly, dismissed by the

Commissioner (Appeals). Dissatisfied with the order passed by the Commissioner (Appeals) on 22nd December, 2004, the petitioner preferred further appeal before the Customs, Excise & Service Tax Appellate Tribunal. By the order dated 23rd June, 2005, the Tribunal refused to grant waiver and the petitioner was called upon to deposit the amount of penalty as directed in the order-in-original and the matter was posted on 23rd August, 2005. The petitioner did not comply with the order dated 23rd June, 2005 and consequently on 23rd August, 2005 the appeal was dismissed by the Tribunal. Hence, the present petition.

3. During the course of motion hearing, the learned counsel for the petitioner prayed for indulgence to the petitioner by granting him a further time of one month for compliance of the order dated 11th February, 2004.

4. Mr.R.V. Desai, the learned senior counsel has left the matter to the Court.

5. Taking overall facts and circumstances of the case, we are satisfied that an opportunity may be granted to the petitioner for compliance of the order dated 11th February, 2004.

6. We, accordingly, dispose of the writ petition by following order :

i) If the petitioner complies with the order dated 11th February, 2004 passed by the Deputy Commissioner, Central Excise, Bhandup Division, Mumbai III, the order dated 23rd August, 2005 shall stand set aside and the appeal before Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench, Mumbai shall stand restored for consideration of the appeal in accordance with law.

ii) On the other hand, if the petitioner fails to comply with the order dated 11th February, 2004, the impugned order dated 23rd August, 2005 shall stand as it is.

iii) Order accordingly.

7. No costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)